

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

ELBRUS TRANSPORTATION, INC.

and

Case No. 29-CA-27566

**LOCAL 803, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Tabitha E. Tyle, Esq., Brooklyn, NY,
for the General Counsel.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on April 4, 2006¹ by Local 803, International Brotherhood of Teamsters (Union), a complaint was issued against Elbrus Transportation, Inc. (Respondent) on April 27. On May 15, a hearing was held before me in Brooklyn, New York.

The complaint alleges essentially that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification. The Respondent failed to submit an answer to the complaint. Section 102.20 of the Board's Rules and Regulations provides that the Respondent must file an answer to the complaint within 14 days from the service of the complaint, and that if it fails to do so, all the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board. The complaint repeated the language set forth in Section 102.20, and stated that the Respondent was required to file an answer on or before May 11. A certified mail receipt in evidence establishes that the complaint was received by the Respondent on May 2. No answer was filed by May 11, or thereafter.

On May 15, a hearing was held before me in Brooklyn, New York. At the hearing, the counsel for the General Counsel made a motion for summary judgment based on the Respondent's failure to file an answer. The Respondent made no appearance at the hearing. In view of the Respondent's failure to file an answer, I granted the motion. The General Counsel waived the filing of a post-hearing brief.

Upon the evidence presented in this proceeding, I make the following:

Findings of Fact

I. Jurisdiction

The complaint alleges and I find that the Respondent, a domestic corporation having its office and place of business at 103 50th Street, Brooklyn, New York, has been engaged in the

¹ All dates herein are in 2006.

operation of an ambulette service. During the past year, the Respondent purchased and received at its Brooklyn, New York facility, goods and materials valued in excess of \$50,000 directly from points outside New York State. I accordingly find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Certification

Following an election held on January 12, the Union was certified on January 24 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers, helpers and dispatchers employed by the Employer at its facility located at 103 53 Street, Brooklyn, New York, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

At all times since January 24, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the above unit.

B. The Refusal to Bargain

On or about February 13 by telephone, and on about February 22 by letter, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment and other terms and conditions of employment.

Since on or about February 13, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit. I find that the Respondent's refusal to bargain constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By failing and refusing on and after February 13, 2006, to bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, I shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 222, 229 (1962), *enfd.* 328 F. 2d 600 (5th Cir. 1064), *cert. denied* 379 U.S. 81 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended²

5 **ORDER**

The Respondent, Elbrus Transportation, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

10 1. Cease and desist from

(a) Refusing to recognize and bargain collectively with Local 803, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the unit described below.

15 (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

20 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with Local 803, International Brotherhood of Teamsters as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

25 All full-time and regular part-time drivers, helpers and dispatchers employed by the Employer at its facility located at 103 53 Street, Brooklyn, New York, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

30 (b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in
35 conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice
40 to all current employees and former employees employed by the Respondent at any time since February 13, 2006.

45 ² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 ³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C., May 30, 2006.

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Steven Davis
Administrative Law Judge

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**APPENDIX
NOTICE TO EMPLOYEES**

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT refuse to recognize and bargain collectively with Local 803, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of our employees in the following appropriate collective-bargaining unit:

All full-time and regular part-time drivers, helpers and dispatchers employed by the Employer at its facility located at 103 53 Street, Brooklyn, New York, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL on request, bargain collectively with Local 803, International Brotherhood of Teamsters as the exclusive representative of our employees and, if an understanding is reached, embody the understanding in a signed agreement:

ELBRUS TRANSPORTATION, INC.

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.